

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANDREW WALKER,

Plaintiff,

ORDER

08-cv-493-slc

v.

COVANCE CLINICAL RESEARCH
UNIT INC; MERCK & CO., INC.,

Defendants.

In an order dated September 26, 2008, I granted plaintiff Andrew Walker leave to proceed on a claim that defendant Covance Clinical Research Unit, Inc. was negligent in failing to take plaintiff to the hospital when he suffered side effects from drugs provided by Covance as part of a clinical study. However, I dismissed defendant Merck & Co., Inc. because it appeared from the allegations in the complaint that Merck's only involvement was that it manufactured the drugs.

Plaintiff has filed a motion for reconsideration and a supplement to his complaint in which he alleges that defendant Merck's involvement was more significant. Specifically, he alleges that defendant Covance was an agent of defendant Merck and that Merck "was advising Covance on what matters to take concerning the petitioner's medical needs." At

this stage of the proceedings, I must accept all of plaintiff's allegations as true, so I will allow him to proceed against defendant Merck as well. However, to prevail against Merck on a theory of agency, plaintiff will have to prove that Covance was "subject to [Merck]'s right to control [Covance] in the performance of [its] services." WIS JI-CIVIL 4000 (citing Arsand v. City of Franklin, 83 Wis. 2d 40, 264 N.W.2d 579 (1978)).

ORDER

IT IS ORDERED that plaintiff Andrew Walker's motion for reconsideration is GRANTED. Plaintiff is allowed to proceed on his claim that defendant Merck & Co., Inc. was negligent in failing to provide him with needed medical care. I am sending copies of petitioner's complaint, dkt. #2, the supplement to his complaint, dkt. #10, this order, and the September 26 order, dkt. #9, to the United States Marshal for service on defendant Merck.

Entered this 22nd day of October, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge